IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.973 OF 2004

Jude Gonsalves & Anr. ...Appellants

Vs.

Akhtar Hassan Rizvi & Ors. ...Respondents

Ms Geeta Shastri for the Appellants
Shri M.J.Shetty for the Respondents.

CORAM: A.S.OKA, J.
DATED: APRIL 1,2005.

P.C.:

1. Taken up for hearing by consent of the Counsel appearing for the parties. After arguing the Appeal for some time the Counsel for the parties agreed that the impugned Judgment and Order dated 15th October 2004 passed in Review Petition No.9 of 2004 and the order dated 21st April 2004 passed in S.C.Suit No.2714 of 1985 be quashed and set aside and S.C.Suit No.2714 of 1985 be restored to file. The Counsel appearing for the parties submitted that the Trial Court may be directed to decide the suit by keeping all the contentions of both the parties expressly open.

2. The learned Counsel for the Appellants submits that the Appellants are entitled to apply for stay of the proceedings of the suit under Section 10 of Code of Civil Procedure, 1908. It is for the learned Trial Judge to adjudicate upon the said contention.

3. Hence, I pass the following order :

i) The impugned Judgment and Order dated 15th October 2004 passed in Review Petition No.9 of 2004 is set aside. Review Petition No.9 of 2004 is disposed of as does not survive.

ii) The order dated 21st April 2004 passed in S.C.Suit No.2714 of 1985 is quashed and set aside and the suit is restored to file.

iii) The learned Trial Judge will hear and decide the suit in accordance with law. All the contentions of the parties on the merits of the suit are expressly kept open. It is open for the Appellants to apply under Section 10 of the said Code for stay of the suit. If such application is made, the Trial Court will decide the same on its own merits after considering all the objections of the Respondents.

iv) Appeal from Order is partly allowed in above terms with no order as to costs.

v) The concerned Court and the parties to act upon an authenticated copy of this order.

Judge.